

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MELVIN DUKES,

No. C 10-02771 SBA (PR)

Plaintiff,

**ORDER DIRECTING PLAINTIFF TO  
SHOW CONTINUED INTENT TO  
PROSECUTE THIS ACTION**

v.

B. HEDRICK, et al.,

Defendants.

On June 7, 2010, Plaintiff filed the instant pro se civil rights complaint under 42 U.S.C. § 1983 in the United States District Court for the Eastern District of California. On June 8, 2010, the Clerk of the Court in the Eastern District sent Petitioner "Prisoner New Case Documents," which included an "Order re Consent or Request for Reassignment" signed by Magistrate Judge Edmund F. Brennan of the Eastern District. On June 18, 2010, the aforementioned documents sent to Petitioner by the Clerk of the Eastern District were returned as undeliverable with a notation: "Undeliverable -- Inmate Refused."

In an Order dated June 21, 2010, Magistrate Judge Brennan transferred this action to this Court.<sup>1</sup> On June 24, 2010, the Clerk of the Court informed Plaintiff that this case had been transferred to the Northern District.

Pursuant to Federal Rule of Civil Procedure 41(b), a district court may sua sponte dismiss an action for failure to prosecute or to comply with a court order. See Link v. Wabash R.R., 370 U.S. 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991). But such a dismissal should only be ordered when the failure to comply is unreasonable. See id. A district court should

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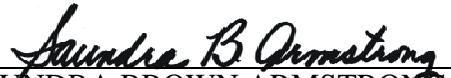
<sup>1</sup> Magistrate Judge Brennan indicated that he was construing Plaintiff's action as a civil rights action, stating: "Although filed on a form for a petition for writ of habeas corpus, plaintiff alleges his civil rights have been violated as a result of his conditions of confinement at Salinas Valley State Prison." (June 21, 2010 Order at 1.)

1 afford the litigant prior notice of its intention to dismiss. See Malone v. United States Postal Serv.,  
2 833 F.2d 128, 133 (9th Cir. 1987).

3 In the instant case, the documents sent to Petitioner by the Clerk of the Eastern District were  
4 returned as undeliverable. Furthermore, Plaintiff has failed to communicate with the Court since this  
5 case has been transferred to the Northern District. Accordingly, it is in the interests of justice and  
6 judicial efficiency for the Court to establish whether Plaintiff intends to continue to prosecute this  
7 action. Plaintiff shall file a notice of his continued intent to prosecute no later than **thirty (30) days**  
8 of the date of this Order. Failure to do so will result in the dismissal of this action without prejudice  
9 for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure. See Malone, 833  
10 F.2d at 133 (the district court should afford the litigant prior notice before dismissing for failure to  
11 prosecute).

12 IT IS SO ORDERED.

13 DATED: 8/25/10

  
14 SAUNDRA BROWN ARMSTRONG  
15 United States District Judge  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 MELVIN DUKES,

5 Plaintiff,

6 v.

7 B HEDRICK et al,

8 Defendant.

Case Number: CV10-02771 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on August 25, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Melvin Dukes D-33572  
16 Salinas Valley State Prison  
17 P.O. Box 1050  
18 Soledad, CA 93960-1050

19 Dated: August 25, 2010

20 Richard W. Wieking, Clerk  
21 By: LISA R CLARK, Deputy Clerk  
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